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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

13 BMA LLC, Yaroslav Kolchin and Vitaly
14 Dubinin,

15 Plaintiffs,

16 v.

17
18 HDR Global Trading Limited (A.K.A.
19 BitMEX), ABS Global Trading Limited,
20 Arthur Hayes, Ben Delo and Samuel Reed,

21 Defendants.

Case No. 3:20-cv-3345-WHO

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' ADMINISTRATIVE
MOTION PER CIVIL LOCAL RULE 7-
11**

**Complaint Filed: May 16, 2020
Second Amended Complaint Filed: July
14, 2020**

**Discovery Cutoff: None Set
Pretrial Conference Date: None Set
Trial Date: None Set**

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2 **PLAINTIFFS' RESPONSE**

3 **Procedural Background**

4 Plaintiffs filed the original Complaint, Dkt. No. 1, on May 16, 2020, alleging that
5 Defendants engaged in racketeering in violation of 18 U.S.C. §§ 1962(d) and (c) ("RICO") and
6 cryptocurrency market manipulation in violation of the Commodity Exchange Act ("CEA"), 7
7 U.S.C. §§ 1 et seq., as well as state causes of action. Two days later, on May 18, 2020 Plaintiff
8 filed an Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(1)(A), Dkt. No. 6, with minor
9 corrections of typographical errors and no substantive changes. On July 14, 2020, parties
10 stipulated to waiver of service of process, filing of a Second Amended Complaint ("SAC") and
11 set a briefing schedule. Court has granted this stipulation, Dkt. No. 31, and Plaintiffs filed the
12 SAC on July 14, 2020, Dkt. No. 32. Subsequently, in August of 2020, Plaintiffs asked
13 Defendants to stipulate on filing of a Third Amended Complaint, adding new parties, which
14 Defendants refused during a meet and confer call. Defendants filed their Motion to Dismiss
15 under Fed. R. Civ. P. 12(b)(6) on September 14, 2020, Dkt. No. 42. Plaintiffs' opposition to said
16 Motion was also filed. To conserve judicial resources, Plaintiffs filed a Motion for Leave to File
17 Third Amended Complaint ("TAC", Dkt. No. 45) on October 8, 2020, overcoming all of
18 Defendants' arguments raised in their Motion to Dismiss. Dkt. No. 46. *Dolgov v. HDR Global*
19 *Trading Limited*, No. 4:20-cv-07140-YGR was filed as a separate case because Defendants'
20 counsel Mr. Hibbard was trying to use any excuse, including a simple addition of new parties to
21 the present case, for insisting on delaying the resolution of the initial motions in the present action
22 even further.

23 On October 1, 2020, Defendants Hayes, Delo and Reed were indicted by the United States
24 Department of Justice ("DOJ") on felony charges of violating the Bank Secrecy Act by willfully
25 evading U.S. anti-money laundering requirements. On the same day, the Commodity Futures
26 Trading Commission ("CFTC") announced the filing of a civil enforcement action in the U.S.
27 District Court for the Southern District of New York charging Defendants HDR, ABS, Hayes,
28 Delo and Reed with operating an unregistered trading platform and violating multiple CFTC

1 Regulations, including failing to implement required anti-money laundering procedures.

2 In announcing the indictment, FBI Assistant Director William F. Sweeney Jr. said: "As
3 we allege here today, the four defendants, through their company's BitMEX crypto-currency
4 trading platform, willfully violated the Bank Secrecy Act by evading U.S. anti-money laundering
5 requirements. One defendant went as far as to brag the company incorporated in a jurisdiction
6 outside the U.S. because bribing regulators in that jurisdiction cost just 'a coconut.' Thanks to the
7 diligent work of our agents, analysts, and partners with the CFTC, they will soon learn the price
8 of their alleged crimes will not be paid with tropical fruit, but rather could result in fines,
9 restitution, and federal prison time." Defendant Reed was apprehended by the FBI in Boston,
10 Massachusetts. Defendants Hayes and Delo remain at large and are currently fugitives wanted by
11 the U.S. Government.

12 **Statement Of The Relevant Facts**

13 Defendants Hayes, Delo and Reed are notorious fraudsters, who have been criminally
14 charged with felony money laundering related offenses by the U.S. Department of Justice and two
15 of whom are currently fugitives from the U.S. law enforcement. Attached hereto as Exhibits A
16 and B are true and correct copies of the announcements of the CFTC and DOJ enforcement
17 actions against Defendants. Defendant Hayes publicly admitted to bribery of foreign government
18 officials and bank fraud and even expressed pride in his criminal actions.

19 Exhibits C and D are true and correct copies of two sworn declarations by two of the
20 defrauded victims of the Defendants, Frank Amato and Elfio Guido Capone, attesting, under oath,
21 how Defendants defrauded them out of millions of dollars.

22 Being keenly aware of the Commodity Futures Trading Commission ("CFTC") and
23 Department of Justice ("DOJ") investigations and imminently forthcoming civil and criminal
24 charges, and while preparing to go on a lam from the U.S. authorities, Defendants Hayes, Delo
25 and Reed looted about \$440,308,400 of proceeds of various nefarious activities that took place on
26 the BitMEX platform, from accounts of Defendant HDR, Exhibits E, F, G. The looted funds
27 were divided among Defendants and their associate substantially in accordance with the
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1 following table, prepared on information and belief of Plaintiffs:

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	Shareholder of HDR Global Trading Limited	Equity Ownership Percentage	Distribution Amount
6	1. Arthur Hayes	31.67%	\$139,430,993.33
7	2. Benjamin Delo	31.67%	\$139,430,993.33
8	3. Samuel Reed	31.67%	\$139,430,993.33
9	4. Sean O'Sullivan Ventures (SOSV)	5%	\$22,015,420.01
10		Total:	\$440,308,400.00

11 These fraudulent distributions of proceeds of illegal acts were made on the following dates, which
 12 are **after** Defendants learned about the Government investigations and **after** receiving a draft
 13 complaint in this action in 2019:

14

15

	Distribution Date
16	1. October 15, 2019
17	2. November 19, 2019
18	3. January 2020

19

20 From this information, it appears that Defendants were actively and deliberately looting
 21 Defendant HDR and trying to make its funds unavailable for the collection of future judgments
 22 against it. Specifically, the aforesaid profit distributions at a rate of \$440,308,400.00 in just three
 23 months were clearly not performed in the ordinary course of business of Defendant HDR, as they
 24 represent \$1,761,233,600 annual profit distribution rate, which money Defendant HDR simply
 25 does not earn. Therefore, these extraordinarily large distributions were clearly designed to loot
 26 Defendant HDR of its assets and hinder Plaintiffs' and Government's recovery of any future
 27 judgments. Furthermore, such a remarkable surge in proceeds distributions may also indicate that
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1 Defendants are looting BitMEX Insurance Fund, Exhibits E, F, G.

2 In addition, from the outlandish arguments that Mr. Hibbard made in his Motion to
3 Dismiss and his Opposition to Plaintiffs' Motion to Stay and from his attempt to even
4 misrepresent the allegations of Plaintiffs' Complaint to Judge Orrick, it is patently obvious that
5 Mr. Hibbard is not fighting this case on the merits. Mr. Hibbard's clear and unmistakable
6 strategy is to delay the current proceedings to give Defendants enough time to loot their company
7 dry and prevent Plaintiffs from collecting any money on the inevitable judgment.

8 Argument

9 Plaintiffs would like to address Defendants' attempt to mislead and confuse the Court by
10 making it look like Plaintiffs's counsel filed the *Dolgov v. HDR Global Trading Limited*, No.
11 4:20-cv-07140-YGR action as a separate case for no apparent reason. In reality, *Dolgov* action
12 was filed as a separate case only because, being motivated by his desire to delay the proceedings
13 as much as possible as explained in detail above, Defendants' counsel Mr. Hibbard was trying to
14 use any excuse, including a simple addition of new parties to the present case, for insisting on
15 delaying the resolution of the initial motions in the present action even further. Defendants had
16 four full months to file their motions to dismiss and Plaintiffs were not willing to delay resolution
17 of those motions even further as Defendants tried to do.

18 Therefore, it was Defendants and not Plaintiffs who were responsible for the duplication
19 of the judicial proceedings and for delaying resolution of the initial motions as much as they were
20 delayed.

21 Plaintiffs believe that the determination of whether *BMA LLC v. HDR Global Trading*
22 *Limited*, No. 3:20-cv-03345-WHO and *Dolgov v. HDR Global Trading Limited*, No. 4:20-cv-
23 07140-YGR are Related Cases is properly left to sound discretion of Judge William H. Orrick
24 pursuant to Civil Local Rule 3-12.

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Dated: October 30, 2020

Respectfully submitted,

By: /s/ Pavel I. Pogodin
Pavel I. Pogodin

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